

REMARKS

Claims 8-11 and 14-25 are pending in this application. By this Amendment, claims 8-11 are amended, claims 1-7, 12, and 13 are canceled, and claims 14-25 are added. Support for the amendments to the claims and new claims 14-25 may be found, for example, in the claims as originally filed. No new matter is added.

I. Restriction and Election of Species Requirement

In reply to the Restriction and Election of Species Requirement, Applicant elects Group II, claims 8-11, with traverse. By this Amendment, claims 14-25 are added, which Applicant respectfully submits should be included within Group II. As a species, Applicant elects flavonoids extracted from gingko biloba as the lipophilic antioxidant (first active principle) and mannitol as the hydrophilic antioxidant (second active principle), with traverse. At least claims 8, 9, 11, 14, 15, 17-19, 20-23, and 25 read on the elected species. At least claim 8 is generic.

It is respectfully submitted that the subject matter of all claims and species is sufficiently related that a thorough search for the subject matter of any one Group of claims and species would encompass a search for the subject matter of the remaining claims and species. Thus, it is respectfully submitted that the search and examination of the entire application could be made without serious burden. See MPEP §803 in which it is stated that "if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions" (emphasis added). It is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicant and duplicative examination by the Patent Office.

Moreover, unity of invention only needs to be determined in the first place between independent claims, and not the dependent claims, as stated in ISPE 10.06:

Unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims. By “dependent” claim is meant a claim which contains all the features of one or more other claims and contains a reference, preferably at the beginning, to the other claim or claims and then states the additional features claimed (Rule 6.4).

See also MPEP §1850(II). ISPE 10.07 further provides:

If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims. In particular, it does not matter if a dependent claim itself contains a further invention.

See also MPEP §1850(II).

Thus, with respect to Group II, the election of species requirement is improper because the Office Action is requiring Applicant to elect between claim features that are not recited in claim 8--the only independent claim of Group II. Specifically, the Office Action is requiring Applicant to elect a specific hydrophilic antioxidant, such as one of the hydrophilic antioxidants recited in claim 11 (i.e. mannitol and vitamin C). However, a lack of unity of invention cannot exist between an independent claim and the subject matter of the claims that depend from that claim even if a dependent claim contains a further invention. *See ISPE 10.07; MPEP §1850(II).* For this reason, the election of species requirement, which requires election between features only recited in the dependent claims, is improper (at least in part) and must be withdrawn (at least in part).

Alternatively, it is understood, that upon search, examination, and allowance of the elected species, search and examination will continue as to the non-elected species within the scope of the generic claims. Because generic claim 8 is believed to be allowable, Applicant respectfully requests rejoinder and examination of the non-elected species.

Thus, withdrawal of the Restriction and Election of Species Requirement is respectfully requested.

II. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of this application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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